Dec 14 1870

Mr. Jus. Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 20633

ABNER C. AND LEWIS D. CAMPBELL, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. WILCOX.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JANUARY 18, 1869.

Dec 17 1870

Mr Justice

Jas Field

SUPREME COURT OF THE UNITED STATES.

No 434.

ABNER C. AND LEWIS D. CAMPBELL, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. WILCOX.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 At a circuit court of the United States, within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-house, in the city of Cincinnati, on the first Tuesday of October, being the first day of that month, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-second—present, the Honorable Noah H. Swayne and the Honorable Humphrey H. Leavitt, judges of said court—among the proceedings had were the following, to wit:

908.

WILLIAM H. WILCOX
vs.
ABNER C. CAMPBELL AND LEWIS D. CAMPBELL. } Assumpsit.

Be it remembered that heretofore, to wit, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-seven, came the plaintiff, by William Cornell, his attorney, and sued out of the clerk's office of said court the writ of summons ad respondendum against the said defendants in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon Abner C. Campbell and Lewis D. Campbell, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States, for the southern district of Ohio aforesaid, at Cincinnati, on the first Tuesday in the month of October, 1867, to answer unto William H. Wilcox, citizen of and resident in the State of Indiana, of a plea
2 of assumpsit, and have you then and there this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the
[SEAL.] United States, this 16th day of September, A. D. 1867, and in the 92d year of the independence of the United States of America.

Attest:

JOHN McLEAN, *Clerk.*

Upon which said writ is the following endorsements, to wit:

Cause of action.

(Cause of action.) Suit brought on four promissory notes, each for $2,750, dated August 4, 1866, payable one year from date to the order of Wm. H. Wilcox; also for goods sold and delivered. Damages, $16,000.

WM. CORNELL, *Att'y for Plaintiff.*

Security for costs.

(Security for costs.) I acknowledge myself security for costs in this case.

JOHN B. CORNELL.

M'l's return.

And afterwards, to wit, on the seventeenth day of September, in the year last aforesaid, came the said marshal, to whom the aforesaid writ of summons was in form aforesaid directed, and returned the same into the clerk's office of said court with his proceedings endorsed thereon in the words and figures following, to wit:

CINCINNATI, *September* 17, 1867.

Served this day in Hamilton each of the within-named persons, Abner C. Campbell and Lewis D. Campbell, by copy at their residences.

A. HICKENLOOPER, JR., *U. S. Marshal*,
By D. S. SMITH, *Deputy*.

Declaration.

And afterwards, to wit, on the twenty-seventh day of September, in the year last aforesaid, came the plaintiff, by his attorney, and filed his declaration herein, which said declaration is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of Ohio, ss:

In assumpsit.

WILLIAM H. WILCOX
vs.
ABNER C. CAMPBELL & LEWIS D. CAMPBELL.

William H. Wilcox, who is citizen of the State of Indiana, plaintiff, complains of Abner C. Campbell and Lewis D. Campbell, defendants, who are citizens of the southern district of the State of Ohio, defendants, in a plea of assumpsit.

For that, whereas the said defendants, heretofore, to wit, on the fourth day of August, 1866, at Hamilton, Ohio, to wit, at the southern
3 district of Ohio aforesaid, made their promissory note in writing, and delivered the same to William H. Wilcox, and thereby then and there promised to pay to said William H. Wilcox, or order, the sum of two thousand seven hundred and fifty dollars, in one year after the date thereof, at the First National Bank of Hamilton, which period has elapsed. And the said Abner C. Campbell and Lewis D. Campbell then and there, in consideration of the premises, promised to pay the amount of said note to the said William H. Wilcox according to the tenor and effect thereof.

And, also, for that, whereas the said defendants, heretofore, to wit, on the fourth day of August, 1866, at Hamilton, Ohio, to wit, at the district aforesaid, made their certain other promissory note in writing, and delivered the same to William H. Wilcox, and thereby, then and there, promised to pay to said William H. Wilcox the sum of two thousand seven hundred and fifty dollars, in one year after the date thereof, at the First National Bank of Hamilton, which period has elapsed. And the said Abner C. Campbell and Lewis D. Campbell then and there, in consideration of the premises, promised to pay the amount of said note to the said William H. Wilcox according to the tenor and effect thereof.

And for that, whereas, also, the said defendants, heretofore, to wit, on the fourth day of August, 1866, at Hamilton, Ohio, to wit, at the district

aforesaid, made their certain other promissory note in writing, and delivered the same to William H. Wilcox, and thereby, then and there, promised to pay to said William Wilcox or order the sum of two thousand seven hundred and fifty dollars, in one year after the date thereof, at the First National Bank of Hamilton, which period has elapsed. And the said Abner C. Campbell and Lewis D. Campbell then and there, in consideration of the premises, promised to pay the amount of said
4 note to the said William H. Wilcox according to the tenor and effect thereof.

And for that, whereas, also, the said defendants, heretofore, to wit, on the fourth day of August, 1866, at Hamilton, Ohio, to wit, at the southern district of Ohio, made their certain other promissory note in writing, and delivered the same to William H. Wilcox, and thereby, then and there, promised to pay to said William H. Wilcox or order the sum of two thousand seven hundred and fifty dollars, in one year after the date thereof, at the First National Bank of Hamilton, which period has elapsed. And the said Abner C. Campbell and Lewis D. Campbell then and there, in consideration of the premises, promised to pay the amount of said note to the said William H. Wilcox according to the tenor and effect thereof.

And, also, for that, whereas the said defendants, heretofore, to wit, on the seventh day of August, A. D. 1866, at the district aforesaid, were indebted to the said plaintiff in a large sum of money, to wit, the sum of sixteen thousand dollars for the price and value of goods then and there bargained and sold by the plaintiff to the defendants at their request; and in a large sum, to wit, the sum of sixteen thousand dollars for the price and value of work and labor then and there done, and the materials for the same provided by the plaintiff for the defendants at their request; and in a large sum, to wit, the sum of sixteen thousand dollars for money then and there lent and advanced by the plaintiff to the defendants at their request; and in a large sum, to wit, the sum of sixteen thousand dollars for money then and there paid by the plaintiff for the use of the defendants at their request; and in a large sum, to wit, the sum of sixteen thousand dollars for money then and there had and received by the defendant to the use of the plaintiff; and in a
5 large sum, to wit, the sum of sixteen thousand dollars for money found to be due from the defendant to the plaintiff, upon an account then and there stated between them.

And the said defendants afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, in consideration of the premises, promised to pay the said several sums of money above mentioned to the plaintiff on request, yet the said defendants have disregarded their said promises, and, though often requested, have not paid the said sums of money, nor any of them, nor any part thereof, to the damage of the said plaintiff in the sum of sixteen thousand dollars; and therefore he brings suit, &c.

W. CORNELL, *Attorney for Plaintiff.*

Jour. N.—Page 290.

And afterwards, to wit, on the 16th day of October, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

On motion to the court, it is ordered that the default herein be, and the same hereby is, set aside, and defendants have leave to file their demurrer herein forthwith; and demurrer filed.

Demurrer.

And which said demurrer is in the words and figures following, to wit:

In the circuit court of the United States, within and for the southern district of Ohio.

WILLIAM H. WILCOX
vs.
ABNER C. CAMPBELL & LEWIS D. CAMPBELL. } Assumpsit.

Now comes the defendants, by their counsel, Durbin Ward, and demurres, and for cause of demurrer says that the declaration in this cause does not set forth facts sufficient in law to constitute a good cause of action; and he therefore prays judgment, and that said declaration may be quashed, & will, &c.

DURBIN WARD, *Att'y for Def'ts.*

Joinder.

And afterwards, to wit, but on the same day, and in the year last aforesaid, came the said plaintiff, by his attorney, and filed his joinder herein; which said joinder is in the words and figures following, to wit:

WM. H. WILCOX
vs.
ABNER C. CAMPBELL AND LEWIS D. Campbell. } No. 908.—Circuit court U. S., southern district of Ohio.—In assumpsit.

6 And now comes the plaintiff, by his attorney, W. Cornell, and says that the declaration is sufficient in law.

Oct. 16, 1867.

W. CORNELL, *Att'y for Pl'ff.*

Jour. N.—Page 310.

And afterwards, to wit, on the second day of November, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

This case [this case] came on to be heard on the defendants' demurrer to plaintiff's declaration, and was argued by counsel and submitted; and the court, upon consideration thereof, finds said demurrer to be not well taken and overrules the same. And, on motion, leave is granted defendants to file their plea herein within 10 days.

Pleas.

And afterwards, to wit, on the eleventh day of November, in the year last aforesaid, came the defendants, by Durbin Ward, their attorney, and filed their pleas herein; which said pleas are in the words and figures following, to wit:

Circuit court of the United States, southern district of Ohio.

WILLIAM H. WILCOX
vs.
ABNER C. CAMPBELL ET AL. } No. 908.—Assumpsit.

The defendants come and defend, &c., and for plea to the declaration say that they did not assume, undertake, and promise in manner and

form as the said plaintiff hath above thereof complained against them; and of this they put themselves upon the country, and the plaintiff doth the like.

And for a further plea in this behalf the said defendants, by leave of the court, here, for this purpose, first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that before the making of the said promissory notes in the first four counts of the plaintiff's declaration mentioned, to wit, on the fourth day of August, A. D. 1866, at the county and district aforesaid, it was, corruptly and unlawfully,
7 and against the form of the statute in such case made and provided, agreed by and between the said William H. Wilcox and the said Abner C. Campbell that the said William H. Wilcox should lend and advance to the said Abner C. Campbell a certain sum of money, to wit, the sum of ten thousand dollars in manner following; that is to say, the said sum was to be advanced and loaned for the period of one year from and after said fourth day of August, 1866, and that for securing the repayment of said sum of $10,000, so to be lent and advanced as aforesaid, together with the sum of $1,000 further to be paid as interest on and for the forbearing to demand repayment for the said period of one year as aforesaid, the defendants should make and execute the four several promissory notes in the plaintiff's declaration mentioned. And the said defendants further say that in pursuance and in part performance of said corrupt and unlawful agreement, the said defendants afterwards, to wit, on the said 4th day of August, 1866, to wit, at the county and district aforesaid, made and executed the said several four promissory notes in the plaintiff's declaration mentioned, and delivered the same to the plaintiff on the terms aforesaid; and that in pursuance of said corrupt and unlawful agreement the said William H. Wilcox, afterwards, to wit, on the day and year last aforesaid, did lend and advance to the said Abner C. Campbell the sum of $10,000. And the said defendants further say that the said sum of $1,000, so agreed to be given and paid by the said defendants to the said plaintiff for such loan and forbearance as aforesaid, exceeds the rate of $6 for the loan and forbearing of $100 for one year, contrary to the statute in such case made and provided, whereby, and by force of the statute in such
8 case made and provided, the said several promissory notes, as to excess of interest, were and are wholly void, and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

DURBIN WARD, *Att'y for Def'ts.*

Jour. N.—Page 338.

And afterwards, to wit, on the twenty-ninth day of November, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

On motion to the court, it is ordered that the default herein be, and the same is hereby, set aside, and plaintiff has leave to file his replication herein forthwith; and replication filed.

Replication.

And which said replication is in the words and figures following, to wit:

WILLIAM H. WILCOX *vs.* ABNER C. CAMPBELL & LEWIS D. Campbell.	Circuit court U. S., southern dist. of Ohio.—Replication in assumpsit.

And now comes the plaintiff, by his attorney, W. Cornell, and says that it is true, as stated in defendants' plea, that defendants, Abner C. Campbell, received, at the time stated therein, from plaintiff the sum of ten thousand dollars, for which defendants, A. C. Campbell & L. D. Campbell, gave their four certain promissory notes set forth in plaintiff's declaration. Wherefore he prays judgment, and his debt, set forth in his said declaration, together with his damages by him sustained by reason of the detention thereof, with his costs to be adjudged to him.

W. CORNELL, *Att'y for Pl'ff.*

Jour. 2.—Page 346.

And afterwards, to wit, on the 5th day of December, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

This day came the parties, by their attorneys, and, waiving the intervention of a jury, submit this case to the court; and the court, being fully advised in the premises, doth assess the damages of said
9 plaintiff at ten thousand eight hundred and five dollars.

Therefore it is considered that the said William H. Wilcox, plaintiff, recover of the said Abner C. Campbell, principal, and Lewis D. Campbell, security, defendants, the said sum of ten thousand eight hundred and five dollars, his damages aforesaid, in form aforesaid assessed, and also his costs in this behalf expended, taxed at $, and execution is awarded therefor. And no levy is to be made of the property of the said Lewis D. Campbell, security, until the property of the said Abner C. Campbell shall have been exausted.

Writ of error bond.

And afterwards, to wit, on the sixteenth day of December, in the year last aforesaid, came the said defendants and filed their writ of error bond herein; which said bond is in the words and figures following, to wit:

Know all men by these presents, that we, Abner C. Campbell, of Dayton, Butler County, and Peter Schwab, of Hamilton, Butler County, and State of Ohio, are held and firmly bound unto William H. Wilcox in the penal sum of twenty thousand dollars, to the payment of which, well and truly to be made, we do, by these presents, jointly and severally, bind ourselves, our heirs, executors, and administrators.

Sealed with our seals, and dated this sixteenth day of December, A. D. 1867.

The condition of the above obligation is such that whereas the said Abner C. Campbell and Lewis D. Campbell have obtained an allowance of a writ of error upon a certain judgment rendered in the circuit court of the United States, in and for the southern district of Ohio, at the term of October, A. D. 1867, of said court, in favor of the said William H. Wilcox and against the said Abner C. Campbell and Lewis D. Campbell, for the sum of ten thousand and eighty-five dollars and costs of suit:

Now, if the said Abner C. and Lewis D. Campbell shall pay the
10 condemnation money and costs, in case the said judgment of the circuit court of the United States for said district shall be

affirmed by the Supreme Court of the United States, in whole or in part, then this obligation shall be void; otherwise to be and remain in full force and effect in law.

A. C. CAMPBELL. [SEAL.]
PETER SCHWAB. [SEAL.]

Approved.

11 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court of the United States, before you between William H. Wilcox, plaintiff, and Abner C. & Lewis D. Campbell, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this seventeenth day of [SEAL] December, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the 92nd.

Attest:

JOHN M'LEAN, *Clerk.*

(Indorsed:) 908. United States circuit court, southern district of Ohio. William H. Wilcox vs. Abner C. & Lewis D. Campbell. Writ of error. Filed December 17, 1867.

JOHN M'LEAN, *Clerk.*

Durbin Ward, att'y for def'd'ts.

12 THE UNITED STATES OF AMERICA:

Supreme Court of the United States to William H. Wilcox, greeting:

Whereas Abner C. & Lewis D. Campbell, defendants, obtained the allowance of our writ of error to the Supreme Court of the United States directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of assumpsit, wherein you, the said William H. Wilcox, in that action lately recovered against the said Abner C. & Lewis D. Campbell a judgment for ten thousand eight hundred and five dollars and costs,

as by the said record in the said circuit court in said case remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Abner C. & Lewis D. Campbell we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be: You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable S. P. Chase, Chief Justice of the United States of America, this 17th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of the inde-
[SEAL] pendence of the United States of America the .

H. H. LEAVITT,
One of the Judges of said Court.

(Indorsed:) 908. United States circuit court, southern district of Ohio. William H. Wilcox vs. Abner C. & Lewis D. Campbell. Citation. Filed December 17, 1867.

JOHN M'LEAN, *Clerk.*

Durbin Ward, att'y for def'd'ts.

13 THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John M'Lean, clerk of the circuit court of the United States, within and for said district, hereby certify the foregoing to be a true and correct transcript taken from the files and records of said court in the case of William H. Wilcox vs. Abner C. Campbell and Lewis D. Campbell, No. 908, as the same are kept in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 2d day of January, A. D. 1869, and of the independence of the United States of America
[SEAL] the 93d.

Attest:

JOHN M'LEAN, *Clerk.*

Supreme Court of the United States.

No. 33.

CAMPBELLS *vs.* WILCOX.

BRIEF FOR PLAINTIFFS IN ERROR.

The only question arising in this case is upon the demurrer to the declaration, which counts upon certain promissory notes, bearing date in 1866, but contains no averment that they were stamped at their date or at any subsequent time.

The English precedents of declaration upon instruments subject to stamp duties contain no such averment, but they are not in point, for the want of a stamp does not in England invalidate the instrument, but only excludes it from being used in evidence *until* stamped. Our statutes declare the unstamped instrument *inaalid* until a stamp is affixed by an application to an internal revenue officer.

The statutory provisions on the subject of stamps may be found in *Bump's Internal Revenue Laws*, page 306; and the decisions of the State courts are cited on pages 315, 316, 317, and 318 of same book.

If the stamp is necessary to give *validity* to the instrument, it would seem that the declaration should aver that the note was stamped.

HENRY STANBERY,
For Plaintiffs in Error.

Supreme Court of the United States.

No. 33.

ABNER C. CAMPBELL and LEWIS D. CAMPBELL,
PLAINTIFFS IN ERROR,

vs.

WILLIAM H. WILCOX, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

In this action it is claimed that the court below erred in overruling the demurrer of the defendents below to the plaintiffs' declaration.

It is claimed by the plaintiffs in error that the declaration should aver that the notes declared upon were duly stamped.

The law regulating the stamping of notes is found in Statutes at Large, vol. 14, page 142, and it is therein provided that notes and other instruments of writing may be stamped at any time after their issue; and that unstamped instruments of writing are not to be deemed invalid, unless issued with intent to evade the provisions of the act.

The averments in the declaration that the defendants executed and delivered to plaintiff their certain promissory notes implies that they were such as are contemplated by the laws of the land, and if they were not stamped at the time the declaration was filed they could have been stamped at any time thereafter, provided the stamps were not omitted for the purpose of defrauding the Government.